

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Octavio Secundino, on behalf of himself  
and others similarly situated,

Plaintiff,

v

.

Tibetan Japanese Restaurant NY LLC d/b/a  
Tibetan Japanese Restaurant, Tibetan  
Japanese Restaurant Inc. d/b/a Tibetan  
Japanese Restaurant, Lobsang Gawa, and  
Ngawang Jamdol,

Defendants.

Case No. 1:19-cv-6870-ENV-SMG

**ANSWER TO COMPLAINT  
AND AFFIRMATIVE  
DEFENSES**

Defendants, Tibetan Japanese Restaurant NY LLC d/b/a Tibetan Japanese Restaurant,  
Tibetan Japanese Restaurant Inc. d/b/a Tibetan Japanese Restaurant, and Ngawang Jamdol  
("Defendants"), by their attorneys, Hang & Associates, PLLC, for their answer to Octavio  
Secundino's Complaint, state as follows:

**AS TO "INTRODUCTION"**

1. Defendants state that the allegations in Paragraph 1 of the Complaint contain statements that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 1 of the Complaint.

2. Defendants state that the allegations in Paragraph 2 of the Complaint contain statements that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 2 of the Complaint.

**AS TO "JURISDICTION AND VENUE"**

3. Defendants state that the allegations in Paragraph 3 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary,

Defendants deny the remainder of the allegations in Paragraph 3 of the Complaint.

4. Defendants state that the allegations in Paragraph 4 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 4 of the Complaint.

**AS TO “THE PARTIES”**

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in Paragraph 5 of the Complaint.

6. Defendants admit the allegations set forth in Paragraph 6 of the Complaint.

7. Defendants admit the allegations set forth in Paragraph 7 of the Complaint.

8. Defendants admit the allegations set forth in Paragraph 8 of the Complaint

9. Defendants admit the allegations set forth in Paragraph 9 of the Complaint, except for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set forth in Paragraph 9 of the Complaint.

10. Defendants admit the allegations set forth in Paragraph 10 of the Complaint, except for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set forth in Paragraph 10 of the Complaint.

11. Defendants admit the allegations set forth in Paragraph 11 of the Complaint, except for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set forth in Paragraph 11 of the Complaint.

12. Defendants admit the allegations set forth in Paragraph 12 of the Complaint, except

for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set forth in Paragraph 12 of the Complaint.

13. Defendants state that the allegations in Paragraph 13 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 13 of the Complaint.

14. Defendants state that the allegations in Paragraph 14 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 14 of the Complaint.

15. Defendants deny the allegations set forth in Paragraph 15 of the Complaint.

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

17. Defendants admit the allegations set forth in Paragraph 17 of the Complaint.

18. Defendants deny the allegations set forth in Paragraph 18 of the Complaint.

19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint.

20. Defendants state that the allegations in Paragraph 3 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 20 of the Complaint.

#### **AS TO "STATEMENT OF FACTS"**

21. Defendants admit the allegations set forth in Paragraph 11 of the Complaint, except for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set

forth in Paragraph 21 of the Complaint.

22. Defendants deny the allegations set forth in Paragraph 11 of the Complaint, except for the allegations against Defendant Lobsang Gawa. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations against Defendant Lobsang Gawa set forth in Paragraph 22 of the Complaint.

23. Defendants state that the allegations in Paragraph 23 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 23 of the Complaint.

24. Defendants state that the allegations in Paragraph 24 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 24 of the Complaint.

25. Defendants state that the allegations in Paragraph 25 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 25 of the Complaint.

26. Defendants deny the allegations set forth in Paragraph 26 of the Complaint.

27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of the Complaint.

**AS TO “COLLECTIVE ACTION ALLEGATIONS”**

37. Defendants state that the allegations in Paragraph 37 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 37 of the Complaint.

38. Defendants state that the allegations in Paragraph 38 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 38 of the Complaint.

39. Defendants state that the allegations in Paragraph 39 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 39 of the Complaint.

40. Defendants state that the allegations in Paragraph 40 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 40 of the Complaint.

41. Defendants state that the allegations in Paragraph 41 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 41 of the Complaint.

42. Defendants state that the allegations in Paragraph 42 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 42 of the Complaint.

43. Defendants state that the allegations in Paragraph 43 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 43 of the Complaint.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

**AS TO “FIRST CAUSE OF ACTION”**

**(COUNT I Violation of the Fair Labor Standard Act)**

45. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.

46. Defendants state that the allegations in Paragraph 46 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 46 of the Complaint.

47. Defendants state that the allegations in Paragraph 47 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 47 of the Complaint.

48. Defendants state that the allegations in Paragraph 48 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 48 of the Complaint.

49. Defendants state that the allegations in Paragraph 49 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 49 of the Complaint.

50. Defendants state that the allegations in Paragraph 50 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary,

Defendants deny the remainder of the allegations in Paragraph 50 of the Complaint.

51. Defendants state that the allegations in Paragraph 51 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 51 of the Complaint.

52. Defendants state that the allegations in Paragraph 52 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 52 of the Complaint.

53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.

55. Defendants deny the allegations set forth in Paragraph 55 of the Complaint.

56. Defendants state that the allegations in Paragraph 56 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 56 of the Complaint.

57. Defendants state that the allegations in Paragraph 57 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 57 of the Complaint.

58. Defendants state that the allegations in Paragraph 58 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 58 of the Complaint.

59. Defendants state that the allegations in Paragraph 59 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 59 of the Complaint.

**AS TO "SECOND CAUSE OF ACTION"**

**(COUNT II Violation of New York Labor Law)**

60. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.

61. Defendants state that the allegations in Paragraph 61 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 61 of the Complaint.

62. Defendants deny the allegations set forth in Paragraph 62 of the Complaint.

63. Defendants state that the allegations in Paragraph 63 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 63 of the Complaint.

64. Defendants state the allegations in Paragraph 64 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 64 of the Complaint.

65. Defendants state that the allegations in Paragraph 65 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 65 of the Complaint.

66. Defendants state that the allegations in Paragraph 66 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 66 of the Complaint.

67. Defendants state that the allegations in Paragraph 67 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 67 of the Complaint.

68. Defendants state that the allegations in Paragraph 68 of the Complaint contain legal



conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 68 of the Complaint.

69. Defendants state that the allegations in Paragraph 69 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 69 of the Complaint.

70. Defendants state that the allegations in Paragraph 70 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 70 of the Complaint.

71. Defendants state that the allegations in Paragraph 71 of the Complaint contain legal conclusions that do not require a response. To the extent an answer is deemed necessary, Defendants deny the remainder of the allegations in Paragraph 71 of the Complaint.

#### **AS TO “PRAYER FOR RELIEF”**

Defendants admit only that Plaintiff purports to seek judgment against Defendants for the relief referenced in the “WHEREFORE” Paragraph of the Complaint. Except as admitted herein, Defendants deny the allegations in this “WHEREFORE” Paragraph of the Complaint.

#### **AFFIRMATIVE AND OTHER DEFENSES**

##### **FIRST DEFENSE**

The Complaint is barred in whole or in part as some or all of the allegations fail to state a claim upon which relief can be granted.

##### **SECOND DEFENSE**

Defendants, at all times, paid and provided working conditions to Plaintiff in accordance with all applicable state, federal, and local laws.

##### **THIRD DEFENSE**

Defendants have acted in good faith and have not violated any rights that may be secured to Plaintiff under any federal, state, or local laws, rules, regulations and guidelines.

**FOURTH DEFENSE**

The Complaint fails to state a claim for punitive damages.

**FIFTH DEFENSE**

The Complaint fails to state a claim for compensatory damages.

**SIXTH DEFENSE**

Plaintiff has failed to mitigate or otherwise act to avoid, lessen or reduce any of the damages, injury or harm of which they now complain.

**SEVENTH DEFENSE**

The Complaint is barred, in whole or in part, because Plaintiff was paid all sums which may have been due to them under the applicable laws and their corresponding regulations.

**EIGHTH DEFENSE**

Plaintiff was barred from recovering based on equitable doctrines, including, without limitation, laches, unclean hands, waiver, and/or estoppel, and prior administrative proceedings.

**NINTH DEFENSE**

Any recovery should be offset by the amounts of tax credits and/or deductions available to the Plaintiff based on any of the transaction at issue.

**TENTH DEFENSE**

The claims for pre-judgment interest under the New York Labor Law are preempted by the remedies provided by the Fair Labor Standards Act.

**ELEVENTH DEFENSE**

The Court shall not employ supplement jurisdiction over Plaintiffs' New York Labor Law claims when Plaintiff fails to state a claim under Federal Labor Standards Act.

**RESERVATION OF RIGHTS**

Defendants reserve the right to raise additional affirmative and other defenses that may subsequently become or appear applicable to Plaintiff's claims.

WHEREFORE, Defendants respectfully request judgment dismissing the Complaint with prejudice and awarding them costs, reasonable attorneys' fees, and such other relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

Defendants request a trial by jury on all issues triable by a jury.

Dated: Flushing, New York  
February 28, 2020

HANG & ASSOCIATES

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney duly licensed to practice before this Court, certifies that by filing the Defendant's Answer to Complaint and Affirmative Defenses through this Court's electronic filing system, and caused the documents to be served upon the following:

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*Attorney for Plaintiff*

I certify under penalty of perjury that the foregoing is true and correct.

Dated: Flushing, New York

February 28, 2020

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